

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	Electronically Filed
AVCO CORPORATION)	
)	
Defendant.)	
)	

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency (hereinafter "EPA"), alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action pursuant to Sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation and Recovery Act ("CERCLA"), 42 U.S.C. §§ 9607 and 9613(g)(2), and 28 U.S.C. § 2201, for (i)

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reimbursement of response costs incurred and to be incurred by the United States in response to the release or threat of release of hazardous substances from the Avco Lycoming Site, located at 652 Oliver Street in Williamsport, Lycoming County, Pennsylvania("the Site"), and (ii) a declaratory judgment on liability for response costs that will be binding in any subsequent action or actions to recover further response costs.

JURISDICTION AND VENUE

2. This court has jurisdiction over the subject matter of this action pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this judicial district pursuant to 42 U.S.C. §§ 9607 and 9613(b) and 28 U.S.C. § 1391(b) and (c), because the claims arose within the Middle District of Pennsylvania.

DEFENDANT

4. Avco Corporation ("Avco") is a corporation organized under the laws of the State of Delaware and, at all times material hereto, was doing business in this judicial district.

GENERAL ALLEGATIONS

5. The Site is an active manufacturing facility comprised of approximately 28 acres which are mostly covered with buildings or pavement.

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The area surrounding the Site is primarily residential, with two public parks located south and southwest of the Site. Lycoming Creek is located approximately 2,000 feet southwest of the Site and flows south. The Site is located approximately 3,000 feet north of the Williamsport Municipal Water Authority (“WMWA”) well field, which is used as back-up for Williamsport’s primary drinking water sources.

6. In the 1920's, Avco, then named Aviation Corporation, purchased the plant property. Avco has primarily manufactured and repaired aircraft engines at the Site. Wastes containing hazardous substances from Avco’s Site operations were disposed of at the Site at least until the early 1960's.

7. On April 23, 1947, the Aviation Corporation changed its name to Avco Corporation. In February 1985, Avco Corporation was acquired by Textron, Inc., a Delaware corporation based in Rhode Island. Avco Corporation maintains the status of a wholly-owned subsidiary of Textron, Inc.

8. Commencing in 1984, EPA, the Commonwealth of Pennsylvania and Avco conducted various response actions related to the contamination at and around the Site. In late 1984 and early 1985, the Pennsylvania Department of Environmental Protection (“PADEP”) (formerly known as the Pennsylvania Department of Environmental Resources) conducted

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an investigation of groundwater located at and near the Site. This and subsequent sampling showed that contaminated groundwater from the Site had migrated off-Site in the direction of the WMWA well field.

9. On February 2, 1987, EPA officially proposed the Site for listing on the National Priorities List ("NPL"). 48 Fed. Reg. 40674 (Feb. 2, 1987). The NPL identifies those facilities nationwide at which releases or threatened releases of hazardous substances are found to present the greatest threats to the public health and the environment. 42 U.S.C. § 9605(a)(8); 40 C.F.R. §§ 300.66, 300.68.

10. On February 21, 1990, pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, the Site was placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B. 49 Fed. Reg. 37070 (Feb. 21, 1990).

11. Between 1989 and 1991, Avco performed a Remedial Investigation/Feasibility Study ("RI/FS") for the Site pursuant to an Administrative Order on Consent ("AOC") with EPA. The RI/FS revealed that on-Site groundwater contained moderate to high levels of organic and inorganic contaminants. The primary contaminants of concern detected were trichloroethylene ("TCE"), 1,2-dichloroethylene ("DCE"), vinyl chloride, barium, beryllium, cadmium, lead, manganese and chromium.

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12. EPA, pursuant to CERCLA and the National Contingency Plan ("NCP"), as amended, 40 C.F.R. Part 300, has performed a number of response actions relating to the Site, including but not limited to, overseeing the RI/FS, selecting remedial actions to address on-site groundwater contamination, modifying that selection based upon new information, and overseeing certain remedial designs and actions. A Record of Decision ("ROD") selecting a remedy was initially issued in June of 1991 ("1991 ROD"), then at Avco's prompting, a new ROD was issued in 1996 ("1996 ROD"). A portion of the remedy selected in the 1996 ROD was subsequently determined to be unworkable, and EPA issued a revised ROD on April 6, 2000 ("2000 ROD Amendment").

13. EPA issued a Unilateral Administrative Order ("UAO") to Avco on May 7, 1992 requiring Avco to perform the remedial design and remedial action selected for the on-site groundwater contamination. The UAO was amended in 1997 to reflect the changes in the 1996 ROD, and again on May 11, 2000 to reflect the 2000 ROD Amendment. Avco continues to operate and maintain the remedy.

14. Avco is also operating a groundwater extraction and treatment system pursuant to the terms of a Consent Agreement entered into with the

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Commonwealth of Pennsylvania to remediate the contaminated groundwater in the deep aquifer beyond the facility property.

15. In January, 2001, the United States filed a complaint alleging that Avco was liable under Section 107 of CERCLA, 42 U.S.C. § 9607, for reimbursement of the United States' past response costs incurred in connection with the Site. At the same time, the United States lodged a Partial Consent Decree resolving the allegations in the United States' complaint in exchange for reimbursement in the amount of \$461,000 and payment of future response costs, excluding oversight costs. In that Partial Consent Decree, the United States granted a covenant not to sue for certain costs, but reserved, among other things, its right to seek reimbursement of oversight costs incurred by the United States in connection with the Site. On March 26, 2001, the Court entered the Partial Consent Decree.

16. The United States has incurred at least \$350,575.66 in unreimbursed oversight and other response costs in connection with the Site, including pre-judgment interest.

CLAIM FOR RELIEF

17. The allegations of Paragraphs 1 through 16 are realleged and incorporated herein by reference.

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18. The substances identified in paragraph 11 are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

19. The Defendant is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9602(21).

20. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

21. There has been an actual release or threatened release of hazardous substances into the environment at and from the Site within the meaning of Sections 101(22) and 107(a) of CERCLA, 42 U.S.C. §§ 9601(22) and 9607(a).

22. Defendant Avco Corporation is, and at all relevant times was, an owner and operator of the Site within the meaning of Section 107(a)(1) and 107(a)(2) of CERCLA, 42 U.S.C. § 9601(a)(1) and (a)(2).

23. The defendant is liable for EPA's response costs pursuant to Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2).

24. The United States has incurred and will continue to incur response costs as defined in Section 101(25) of CERCLA, 42 U.S.C. §§ 9601(25),

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and authorized by Section 104 of CERCLA, 42 U.S.C. § 9604, to respond to the release or threatened release of hazardous substances at the Site.

25. The response costs were incurred and will be incurred by the United States in a manner not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

PRAYER FOR RELIEF

WHEREFORE, plaintiff United States of America, prays that this Court:

1. Enter judgment against the defendant named herein, in favor of the United States for unreimbursed costs incurred by the United States for response activities related to the Site, including pre-judgment interest;

2. Enter a declaratory judgment on liability for response costs against the defendant named herein, in favor of the United States, that will be binding on any subsequent action or actions to recover further response costs;

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3. Award the United States its costs of suit herein; and
4. Grant such other relief as is deemed appropriate.

Respectfully submitted,

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Date: June 18, 2008

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